IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2006

CORAM

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.3689/1998 & W.M.P.No.23687/1998

V.Govindharajan .. Petitioner

Vs

1. The State of Tamilnadu
Rep. by Secretary to Government,
Transport Department, Fort St.George,
Chennai 600 009.

2. The Management of Thiruvalluvar
Transport Corporation, rep.by its
Managing Director, Pallavan Salai,
Chennai 600 002. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records from the 2nd respondent relating to the order made in Memo No.24642/A1/TTC/97, dated 18.4.1997 and quash the said order dated 18.4.1997 and direct the respondents to promote the petitioner to the post of Senior Superintendent II with effect from 1.6.1993 and fix appropriate time scale and pay the arrears to him.

For Petitioner : Mr.S.Ayyathurai
For Respondents : M/s.S.Ramasubramaniam
Associates for R2

ORDER

This writ petition challenges the order of the 2nd respondent dated 18.4.1997 and also for a direction to the respondents to promote the petitioner to the post of Senior Superintendent II with effect from 1.6.1993.

2. The petitioner has joined in the service of the 2nd respondent in December 1978 and was confirmed as Junior Assistant in December 1979. In the year 1985, he was promoted as Assistant. He was subsequently promoted as Assistant Labour Welfare Officer in 1988, after he passed his P.G. Diploma in Personnel Management. Though the petitioner was promoted as Assistant Labour Welfare Officer, he was directed to work as

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Superintendent in the Management Information System (MIS) since 1988 and attended the training conducted by the 2nd respondent.

3. When certain vacancy arose in the year 1991 in the post of Assistant Managers [Personnel / Labour Welfare Information System Industrial Relations], the petitioner made a representation for being promoted to the said post to which the first respondent in July 1991, has informed the petitioner that he will be considered as and when his turn comes.

4. While so, the 2nd respondent has promoted one K.Kanagasabapathy as Senior Technical Assistant Manager on 6.3.1992 and one S.Sivakumar working as Labour Welfare Officer (In-charge) as Assistant Manager apart from on S.Singaram, Junior Manager (Accounts) as Assistant Manager. That apart, one Mr. M.R.Viswanatha Kurup as Assistant Manager (Accounts) and T.K.Govindan, Senior Superintendent (Traffic) as Assistant Manager (Traffic) and R.Varadharajan Senior Superintendent as Assistant Manager (MIS) In-charge were appointed. Out of the said persons, one Singaram is junior to the petitioner. The said K.Kanagasabapathy has not undergone any training apart from S.Sivakumar who worked as Labour Welfare Officer (In-charge) only for four years.

5. After the promotion of the above said persons, the petitioner has made a representation. As per the Tamilnadu Factories (Welfare Officers) Rules, 1953, the respondent establishment ought to have five Labour Welfare Officers since the work force of the 2nd respondent is more than 10,000. According to the petitioner, there is a vacancy in the post of Assistant Manager (Personnel) for which post he is eligible. Therefore, he filed W.P.No.9573 of 1992 for a direction to promote him and the said writ petition was disposed of on 5.3.1997 directing the 2nd respondent to consider and promote the petitioner to the cadre of Senior Superintendent retrospectively from the date on which he is eligible for promotion. Thereafter, the 2nd respondent passed order on 18.4.1997 stating that there are two persons senior to the petitioner and there is no vacancy. The petitioner, therefore, filed a contempt application in Cont.Appln.No.377 of 1997 which was dismissed on 14.10.1997. The reason for the non-promotion of the petitioner as Senior Superintendent with effect from 1.6.1993 as per the direction of this Court was because the petitioner has filed the writ petition and that he was not promoted.

6. It is also the case of the petitioner that in June 1996, one Sivashanmugam who was working as Senior Superintendent II was promoted as Senior Superintendent I and thus, there has been a vacancy in the post of Senior Superintendent II. In these circumstances, the petitioner has filed the present writ petition challenging the order of the 2nd respondent dated 18.4.1997 which states that there are two persons who are senior to the petitioner and there is no vacancy of Senior Superintendent.

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7. The respondents have filed a counter affidavit. The promotion to every post is depending upon the vacancy that exist in the higher category. The petitioner was taken as a fresh entrant on 11.05.1988 after he relinquished his service prior to 11.05.1988 and the Common Service Rules states that one must put in a minimum of 5 years of service in the post of Senior Superintendent for consideration for promotion from Senior Superintendent to the post of Assistant Manager. The petitioner did not satisfy this condition an as such, he was appointed in the cadre of Superintendent only n 11.05.1988. For the post of Assistant Manager, as per the Rules of Corporation, only the Senior Superintendents who have completed 5 years of service and based on the seniority and merit, are considered. The other persons mentioned by the petitioner were all holding the position of Senior Superintendent in the respective branches and hence, they were promoted as Assistant Managers based on seniority.

8. As far as one K.Singaram, who has been wrongly mentioned as A.Singaram by the petitioner, he was a qualified person, was first appointed as Junior Manager in the grade of Senior Superintendent on 11.101.1985 by direct recruitment and the said post of Junior Manager in the grade of Senior Superintendent was higher than the post of Superintendent held by the petitioner. It is also the case of the respondents that in respect of other persons, K.Singaram, R.K.Kanagasabapathy, R.Varadharajan, S.Sivakumar and V.Govindarajan, they were all Senior Superintendents with sufficient experience and they cannot be compared with the petitioner at all.

9. According to the respondents, there is no time bound promotion for the post of Senior Superintendent. It is also denied that the petitioner was not promoted due to the reason that he filed the writ petition.

10. The petitioner has filed a reply affidavit mainly stating that the petitioner is possessing many additional qualifications since he has P.G. Diploma in Industrial Relations apart from having M.B.A. degree and the training in Management Information System, which qualification the other two persons did not possess. It is also the case of the petitioner that the promotion is not based on mere seniority but it is based on seniority-cum-merit, as per the Regulations. Therefore, according to the petitioner since the petitioner is having more merit in respect of other qualifications, he should have been given preference. The petitioner also refers about one Sayed Safi who was junior to the petitioner and was promoted as Assistant Manager and therefore, in the rank of Assistant Manager, he has now become senior. The petitioner also would reiterate about the other three instances.

11. The learned counsel for the respondents has taken me to the General and Special Rules relating to the respondents especially which relates to Selection Committee regarding the direct recruitment and by promotion. According to the learned counsel, the Selection Committee should formulate a well defined conditions. Clause 16 Explanation-II of

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the General and Special Rules reiterates the same, which reads as follows:

"Clause 16 Explanation-II:

The Selection Committees should formulate well defined conditions and requirements for direct recruitment and for promotions and draw up panel of names for appointment or for promotion to various categories after scrutinising the confidential records and examining any other relevant material. Records of the proceedings of the Selection Committees must be maintained."

12. Thereafter, the learned counsel also took me to the Clause 24 of the Rules, which speaks about the approved candidates for appointment by promotion, which reads as follows:

"Clause 24:Approved candidate for appointment by promotion:

(a) Panel for promotion from particular category of post to another higher category of post shall be drawn up ordinarily twice a year, in the months of April and October, by the Competent Authority, particularly when the panel is drawn up for promotion to categories of posts for which passing of test(s) or acquiring of special qualification(s) has been prescribed as a pre-requisite for promotion. There the candidates are arranged in their order of preference in the panel so drawn up, appointments by promotion to the higher post should be made in such order."

13. In respect of promotion to the post of Supervisory Groups and Managerial cadre, Clause 60 [c] with specific reference, which reads as follows:

"Clause 60 [c] :

Vacancies arising in the various categories of posts in the Supervisory groups and in the Managerial cadre, for which the method of recruitment provides for appointments both by promotion and by direct recruitment, may, unless otherwise specifically provided in these rules, be filled up by promotion and by direct recruitment in the ratio of 2:1 (i.e., 2/3rds by promotion and 1/3rd by direct recruitment).

Provided that if suitable candidates are not available for appointment by promotion from within, the posts remaining vacant against such promotion quota may also be filled up by direct recruitment."

14. Therefore, according to the learned counsel, while making direct recruitment in promotion, as stated above, the petitioner and others mentioned in the counter affidavit, the rules have been scrupulously

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followed and as far as the petitioner is concerned, since he was not having 5 years experience as a Superintendent, he was found not eligible to the post of Assistant Manager. While, admittedly, the promotion is made not only on the seniority, but also, on merit. The respondents have chosen the experience as required as per the Regulations for the purpose of deciding the merit also and in view of the said fact, the promotions made regarding various persons who were having sufficient number of 5 years of experience in the Superintendent level are made perfectly in accordance with the Regulations.

15. It is also the case of the respondents that the petitioner cannot challenge the various promotions granted to various other persons without making them as parties. Since, admittedly, by virtue of promotion given to them, the civil consequences have already occurred to them.

16. On the other hand, Mr.S.Ayyathurai, learned counsel for the petitioner, would submit that the denial of promotion to the petitioner is arbitrary.

17. I have considered the contentions of the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the records.

18. A reference to the Regulations as it has been enumerated by the learned counsel for the respondents, shows that the method of promotion has been followed based on merit-cum-seniority basis. As rightly pointed out by the learned counsel for the respondents, the Hon'ble Apex Court, in Central Council for Research in Ayurvedha and Siddha and another Vs. Dr.K.Santhakumari, reported in 2001 (5) SCC 60, while dealing with the case where the fitness is stipulated as the basis of selection, the Hon'ble Supreme Court while referring to its earlier Judgment rendered in Union of India Vs. Lt.General Rajendran Singh Kadyan reported in 2000 (6) SCC 698 has observed in the following terms:

> "Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. "Seniority-cum-merit'" postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to all India services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them."

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19. Therefore, in such cases, there is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. The Hon'ble Supreme Court has also held that in respect of promotion regarding selection post, it is made on the basis of inter-se merit of the eligible candidates and therefore, a person cannot claim promotion to the post only on the strength of seniority alone.

20. It is in this regard relevant to point out Rule 60 which reads as follows:

> "60. Promotions to posts in the Supervisory Groups and Managerial Cadre:
>
> (a) Promotions to any category of post in the Managerial cadre or a Supervisory Group shall be with reference to availability of vacancies, and based on merit, ability and regularity of attendance, past performance and general suitability.
>
> Note - 1: Seniority will also be one of the factors to be taken into consideration, but the only factor. There shall be no time based review in any category of post in the Supervisory Groups or Managerial cadre."

21. Considering the entire facts and circumstances of the case, I am of the considered view that it is as per the Rules governing the service conditions of the employees of the 2nd respondent, the promotions have been made and there are absolutely no irregularity or illegality in the same. In view of the same, the writ petition fails and deserves to be dismissed and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government,
   Transport Department,
   State of Tamilnadu,
   Fort St.George,
   Chennai 600 009.

2. The Managing Director,
   Management of Thiruvalluvar
   Transport Corporation,
   Pallavan Salai,Chennai 600 002.

+ 1 CC To Mr. S.Ayyathurai, Advocate SR NO. 45592

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